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this Memorandum Decision shall not be  
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collateral estoppel, or the law of the case.

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**IN THE  
COURT OF APPEALS OF INDIANA**

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JAMES MICHAEL MIKLOS,

Appellant,

vs.

ALICE MAY MIKLOS,

Appellee.

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No. 49A05-0610-CV-608

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable John F. Hanley, Judge  
Cause No. 49D11-0510-DR-38962

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**April 24, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

James Miklos (“Husband”) appeals from the trial court’s entry of the dissolution decree ending his marriage to Alice Miklos (“Wife”). Husband presents the following issues for our review:

1. Whether the trial court abused its discretion when it denied his Motion to Dismiss under Indiana Trial Rule 12(B)(5).
2. Whether the trial court abused its discretion when it denied his Motion to Compel discovery.
3. Whether the trial court abused its discretion when it overruled his objection to holding the final hearing.
4. Whether the trial court abused its discretion when it awarded Wife attorney’s fees.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

Husband and Wife were married in June 1992, and Wife filed for a legal separation in October 2005. They did not have any children. After several months of separation, Wife filed a petition for dissolution of marriage in July 2006.

On July 17, 2006, Husband filed a “Verified Motion to Dismiss Petition for Dissolution,” alleging “insufficiency of service of process.” Appellant’s App. at 24. In particular, Husband asserted that Wife had not included with her petition for dissolution either a completed financial declaration or a blank financial declaration form for Husband to complete. Husband contended that because Wife had not complied with those requirements of Marion County Family Law Rule 4(a), her petition should be dismissed. Wife responded that she had already submitted a financial declaration form

with her petition for legal separation and did not need to submit another one. Further, Wife pointed out that Husband had not yet submitted his own financial declaration form. The trial court denied Husband's motion.

On August 29, 2006, Husband filed a "Motion to Compel Production of Financial Declaration Form and Supporting Documents & First Motion to Continue the September 13, 2006 Final Hearing." Id. at 34. In that motion, Husband reiterated that Marion County Family Law Rule 4(a) required Wife to submit both a completed financial declaration form and a blank form for him to complete, and he reasserted that Wife had not complied with that rule. In addition to asking the trial court to compel Wife to comply with the rule, Husband requested "time to conduct discovery, if necessary, to verify the accuracy of any financial information asserted by Wife in her Financial Declaration Forms and associated documents, including, without limitation, the opportunity to dispatch non-party requests for production." Id. at 37. The trial court denied Husband's motions.

On September 7, 2006, Husband filed a "Motion to Reconsider Order Denying Plaintiff's Motion to Compel and to Continue the September 13, 2006 Final Hearing Or, Alternatively Respondent's Motion to Certify Interlocutory Order for Appeal Pursuant to Appellate Rule 14(B) and to Stay Proceedings in the Trial Court Pending Certification of Appeal of Court's Order Denying Motion to Compel Production of Petitioner's Completed Financial Declaration Form and Supporting Documents." Id. at 50. The trial court denied all three of Husband's motions. At the final hearing on September 13, 2006, the following colloquy occurred between Husband's counsel and the trial court:

Counsel: Your Honor, we would like [you] to know at the outset that we object to the continuance—to the actual performance of this hearing today. We had filed a Motion to Compel the Petitioner’s financial declaration. She filed her Petition for Dissolution on July 5th—

Court: We’re not going to go through this again, okay? I’ve ruled on this. I’ve denied it. You’ve wasted my time already, having to read and go through this several times. Okay?

Counsel: Our objection is noted.

Court: It is noted. . . .

Transcript at 4. Following that hearing, the trial court entered its decree of dissolution of marriage. This appeal ensued.

## **DISCUSSION AND DECISION**

### **Issue One: Motion to Dismiss**

Husband first contends that the trial court abused its discretion when it denied his motion to dismiss under Trial Rule 12(B)(5) alleging insufficiency of service of process. We review the denial of a motion to dismiss for an abuse of discretion. Emmons v. State, 847 N.E.2d 1035, 1037 (Ind. Ct. App. 2006). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Id.

Husband maintains that Wife’s “service of her Petition for Dissolution was deficient because it did not include documents required to be served by local rule.”

Brief of Appellant at 10. In particular, Marion County Family Law Rule 4 provides:

A. Requirement. In all family law matters, the initiating party shall complete, serve and file a Financial Declaration Form at the time of filing a Petition for Dissolution of Marriage, Legal Separation or to Establish Paternity or a Petition for Modification of Child Support. A blank form shall be served upon the responding party with the summons or order to appear instructing the respondent to complete, serve and file the form within ten (10) days of receipt. Failure by any party to submit the Verified

Financial Declaration Form as required shall preclude him or her from presenting evidence as to those matters contained in the Verified Financial Declaration Form, except for good cause shown. These time limits may be amended by court order for good cause shown.

B. Exceptions. The Financial Declaration Form need not be exchanged if:

1. The parties have obtained leave of court;
2. The parties have a signed agreement;
3. The proceeding is one in which the service is by publication and there is no response; or
4. The proceeding is post-decree and concerns issues without financial implications. . . .

C. Admissibility. Subject to specific evidentiary challenges, the Financial Declaration shall be admissible into evidence upon filing.

D. Supporting Documents. For the purpose of providing a full and complete verification of income, assets, liabilities and values, each party shall attach to the Financial Declaration Form all information reasonably required and reasonably available. At the minimum this shall include current wage records, income tax returns and supporting documentation. “Reasonably available” means that material which may be obtained by letter accompanied with an authorization but does not mean material that must be subpoenaed or is in the possession of the other party. The court may require either party to supplement the Financial Declaration Form with appraisals, bank records, and other supporting documentation.

E. Financial Declaration Forms – Mandatory Discovery. The exchange of Financial Declaration Forms constitutes mandatory discovery and Indiana Trial Rule 37 sanctions apply. The Forms shall be supplemented if additional material becomes available pursuant to Indiana Trial Rule 26(E)(2).

Here, Wife filed a Financial Declaration Form when she filed her petition for legal separation, but she did not file a second form when she filed her petition for dissolution of marriage. In his motion to dismiss under Trial Rule 12(B)(5), Husband asserted that Wife’s failure to file a second form did not comport with the requirements

of Rule 4(B), which, in turn, rendered service of process of that pleading insufficient. But Husband does not direct us to any authority to support his contention on this issue. He states only, “As noted by the Court of Appeals in Munster v. Groce, 829 N.E.2d 52, 58 (Ind. Ct. App. 2005), service of process requires compliance with Indiana trial rules, as well as comportment with the Due Process Clause of the Fourteenth Amendment.” Brief of Appellant at 15.

But Husband’s characterization of our analysis in Munster is misleading. We did not state that noncompliance with any trial rule renders service of process insufficient, only that noncompliance with trial rules “regarding service” is required. Munster, 829 N.E.2d at 58. Because Husband has not explained how Wife’s failure to file a second financial declaration form constitutes a failure to comply with a trial rule regarding service, his contention on this issue fails. Regardless, Husband has not demonstrated that the trial court abused its discretion when it denied his motion to dismiss Wife’s petition for dissolution.

### **Issue Two: Motion to Compel**

Husband next contends that the trial court abused its discretion when it denied his motion to compel. A trial court enjoys broad discretion when ruling upon discovery matters and we will interfere only where an abuse of discretion is apparent. Davidson v. Perron, 756 N.E.2d 1007, 1012 (Ind. Ct. App. 2001), trans. denied. An abuse of discretion occurs where the decision is against the logic and natural inferences to be drawn from the facts of the case. Id. Because of the fact-sensitive nature of discovery issues, a trial court’s ruling is cloaked with a strong presumption of correctness. Id.

Even where we might have ruled differently on a discovery matter, we reverse only when we are convinced that the trial court abused its discretion.

Husband correctly points out that Marion County Family Law Rule 4(B) expressly provides that a party's financial declaration form and supporting documentation is "mandatory discovery." He maintains, therefore, that the trial court was required to grant his motion to compel production of those documents. But Husband has not rebutted the presumption of correctness of the trial court's ruling on this issue.

In support of his contention, Husband directs us to our supreme court's opinion in Buckalew v. Buckalew, 754 N.E.2d 896 (Ind. 2001). But, again, Husband mischaracterizes the court's holding in that case. Contrary to Husband's assertion, the court did not hold that a trial court's failure to follow its own rule renders its decision "void." Brief of Appellant at 22. Rather, the court held that a trial court's failure to follow its own rule does not render the court's subsequent action "void." Buckalew, 754 N.E.2d at 898. The court stated that such a challenge "may be presented upon appeal" and may render a judgment "voidable." Id.

Following Buckalew, because Husband properly preserved this issue for appeal, we consider whether the trial court in this case failed to follow its own rule and whether that failure renders its final decree voidable. Initially, we observe that the trial court ultimately found that Wife had substantially complied with the rule when she filed her financial declaration form with her petition for legal separation. That supports Wife's assertion that the trial court complied with Family Law Rule 4(B). Moreover, Husband

has not demonstrated that he was unduly prejudiced by Wife's failure to submit a second financial declaration form or supporting documentation. He could have submitted a third-party request for production to Wife's employer, who was identified on the financial declaration form. And the undisputed evidence shows that Husband possessed the documentation underlying certain other assets listed on Wife's form.<sup>1</sup> We cannot say that the trial court abused its discretion when it denied Husband's motion to compel.

### **Issue Three: Final Hearing**

Husband also maintains that the trial court abused its discretion when it conducted the final hearing on September 13, 2006, over his objection. Husband's sole contention on this issue is that the trial court "failed to enforce the local rule in contrast to the mandate of Buckalew." Brief of Appellant at 20. For the reasons stated above, the trial court did not abuse its discretion when it overruled Husband's objection at the final hearing.

### **Issue Four: Attorney's Fees**

Finally, Husband contends that the trial court abused its discretion when it ordered him to pay \$1500 of Wife's attorney's fees. In the final decree, the trial court stated:

The Court further finds that each party incurred necessary and reasonable attorney fees and litigation costs in this action, however, due to the disparity in income between the parties, and the basis for a great deal of Wife's attorney fee expenses, including her defense of Husband's motions, the Husband shall pay to Wife's attorney . . . [\$1500.]

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<sup>1</sup> Further, during the final hearing, Husband was not precluded from questioning Wife regarding the information she provided on her financial declaration form.



Appellant's App. at 73. On appeal, Husband asserts that the trial court was wrong to "believe[] that James' multiple objections to Alice's failure, by counsel, to comply with the local rule were not warranted and constituted misconduct." Brief of Appellant at 20. Husband does not challenge the trial court's finding regarding the parties' income disparity.

In awarding attorney's fees, the trial court has broad discretion. Meade v. Levett, 671 N.E.2d 1172, 1179 (Ind. Ct. App. 1996). We will only reverse the trial court's decision if the award is clearly against the logic and effect of the facts and circumstances before the court. Id. In assessing attorney's fees, the court may consider such factors as the resources of the parties, the relative earning ability of the parties, and other factors which bear on the reasonableness of the award. Id. In addition, any misconduct on the part of one of the parties which directly results in the other party incurring additional fees may be taken into consideration. Id.

Here, the undisputed evidence shows that Husband's monthly income is higher than Wife's. And the record shows that Husband filed repetitive motions, causing Wife to incur unnecessary attorney's fees. See id. We cannot say that the trial court abused its discretion when it ordered Husband to pay Wife's attorney \$1500 in fees.

Affirmed.

RILEY, J., and BARNES, J., concur.